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Attorneys for Plaintiff, MARIA LAZOS as an individual, and *THE ESTATE OF THOMAS BARRERA, By and Through its Successor in Interest, MARIA LAZOS*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARIA LAZOS, *THE ESTATE OF THOMAS BARRERA, By and Through its Successor in Interest, MARIA LAZOS*

Plaintiff,

vs.

CITY OF OXNARD; OXNARD POLICE DEPARTMENT; POLICE CHIEF JOHN CROMBACH; ANDREW SALINA, and DOES 1-10

Defendants.

AND CONSOLIDATED ACTION

Case No. CV08-02987-RGK (SHx)  
(consolidated w/ CV 08-05153 RGK )

**PLAINTIFFS MOTION IN LIMINE NO. 12 TO EXCLUDE ANY EVIDENCE FOUND IN THE TRUCK BELONGING TO LUIS GARCIA**

DATE: August 11, 2009  
TIME:  
DEPT: "850"

Plaintiffs, MARIA LAZOS, TOMAS BARRERA and *THE ESTATE OF THOMAS BARRERA BY AND THROUGH ITS SUCCESSORS IN INTEREST MARIA LAZOS and TOMAS BARRERA* do hereby submit their Motion in Limine seeking an Order Excluding any and/or all Evidence found in the truck belonging to Luis Garcia (hereinafter "the truck"). The truck was the vehicle that decedent, Tommy Barrera, was allegedly attempted to break into when this incident commenced.

Shortly after the incident at issue in this case, counsel for both plaintiffs contacted

1 defendants via their counsel, and requested that all evidence be preserved for inspection  
2 and/or testing by Plaintiffs' experts.

3 The Truck belonged to an individual names Luis Garcia. Mr. Garcia was deposed  
4 on April 28, 2009. During the deposition, Mr. Garcia testified that the truck was released to  
5 him without any instruction to preserve the truck, make the truck available, etc and that  
6 Officer Mancha was the Oxnard Police Department representative who he always spoke with  
7 regarding the truck. Mr. Garcia further testified that he was contacted by both counsel for  
8 Plaintiffs wherein he ws asked whether they could inspect his truck. Mr. Garcia then  
9 contacted Officer Mancha who informed Mr. Garcia that he "could do what he wants" with  
10 "the truck", that he could "sell it" or "destroy it". Officer Mancha also advised Mr. Garcia  
11 that he did not have to speak to anyone, including plaintiffs or their counsel.

12 Spoliation of evidence is the destruction or alteration of evidence. Although a party  
13 need not have acted in "bad faith" to be held responsible for spoliation of evidence [see  
14 *Glover v. BIC Corp.* (9th Cir 1993) 6 F3d 1318, 1329], a party must have had notice that  
15 documents were relevant or potentially relevant to litigation before the documents were  
16 destroyed for spoliation of evidence to have occurred [*United States ex rel. Aflatooni v.*  
17 *Kitsap Physicians Serv.* (9th Cir 2002) 314 F3d 995, 1001; *Akiona v. United States* (9th Cir  
18 1991) 938 F2d 158, 161].

19 While a litigant is under no duty to keep or retain every document in its possession  
20 once a complaint is filed, it is under a duty to preserve what it knows, or reasonably should  
21 know, is relevant in the action, is reasonably calculated to lead to the discovery of admissible  
22 evidence, is reasonably likely to be requested during discovery, and/or is the subject of a  
23 pending discovery request [*National Ass'n of Radiation Survivors v. Turnage* (ND Cal 1987)  
24 115 FRD 543, 556-557, citing *Wm. T. Thompson Co. v. General Nutrition Corp.* (CD Cal  
25 1984) 593 F Supp 1443; see also *Zubulake v. UBS Warburg LLC* (SDNY 2003) 220 FRD  
26 212, 216].

27 A range of sanctions is available for spoliation of evidence under the court's inherent powers  
28 [see, e.g., *Unigard Sec. Ins. Co. v. Lakewood Eng'g & Mfg. Corp.* (9th Cir 1992) 982 F2d

1 363, 368. Courts are invested with inherent powers that are governed not by rule or statute,  
2 but by the control necessarily vested in courts to manage their own affairs so as to achieve  
3 the orderly and expeditious disposition of cases [Chambers v. NASCO, Inc. (1991) 501 US  
4 32, 43–49, 111 S Ct 2123, 115 L Ed2d 27].

5 The following types of sanctions are examples of those imposed under this authority:

- 6 • Exclusion of evidence [see, e.g., Unigard Sec. Ins. Co. v. Lakewood Eng'g & Mfg. Corp.  
7 (9th Cir 1992) 982 F2d 363, 368].
- 8 • Dismissal [see, e.g., ; Leon v. IDX Sys. Corp. (9th Cir 2006) 464 F3d 951, 958 Halaco  
9 Eng'g Co. v. Costle (9th Cir 1988) 843 F2d 376, 380].
- 10 • An award of attorney's fees against a party or counsel who has acted in bad faith,  
11 vexatiously, wantonly, or for oppressive reasons [Leon v. IDX Sys. Corp. (9th Cir 2006) 464  
12 F3d 951, 961].

13 In cases in which the drastic sanctions of dismissal or default are ordered, the range of  
14 discretion for a district court is narrowed, and the losing party's noncompliance must be due  
15 to willfulness, fault, or bad faith [Leon v. IDX Sys. Corp. (9th Cir 2006) 464 F3d 951, 958].  
16 A finding of any of these circumstances may justify the sanction of dismissal [Halaco Eng'g  
17 Co. v. Costle (9th Cir 1988) 843 F2d 376, 381].

18 The existence and degree of prejudice to the wronged party is a factor in the  
19 determination of whether to impose a severe sanction such as dismissal [Leon v. IDX Sys.  
20 Corp. (9 Cir 2006) 464 F3d 951, 958]. In some published cases, the Ninth Circuit has  
21 referred to this factor as optional [see, e.g., Halaco Eng'g Co. v. Costle (9th Cir 1988) 843  
22 F2d 376, 382].

23 25.97[2][e] Imposition of Severe Sanctions Requires Consideration of Public Interest and  
24 Policy.

25 Before imposing a harsh sanction such as dismissal, the district court must consider the  
26 public interest in expeditious resolution of litigation, the court's own need to manage its  
27 dockets, and the public policy favoring disposition of cases on the merits [Leon v. IDX Sys.  
28 Corp. (9th Cir 2006) 464 F3d 951, 958].

1 25.97[3] Sanction Must Be Commensurate With Degree to Which Evidence Was  
2 Compromised or Destroyed.

3 In the Ninth Circuit, the particular sanction levied under the court's inherent power depends  
4 on [see, e.g., *Unigard Sec. Ins. Co. v. Lakewood Eng'g & Mfg. Corp.* (9th Cir 1992) 982 F2d  
5 363, 369]:

- 6 • The degree to which the evidence was altered, lost, or destroyed.
- 7 • The degree of the responsible party's culpability.
- 8 • Surrounding circumstances such as the parties' previous ability to view or test that  
9 evidence prior to its spoliation.

10 When the plaintiff insurer destroyed an electric heater and a boat prior to filing an  
11 action against the heater manufacturer for subrogation based on the allegation that the heater  
12 cause a fire in the boat, the proper sanction was exclusion of evidence regarding the alleged  
13 defect in the heater [see *Unigard Sec. Ins. Co. v. Lakewood Eng'g & Mfg. Corp.* (9th Cir  
14 1992) 982 F2d 363, 369].

15 When appropriate, a party that destroyed potential evidence should show that he or  
16 she did not do so in response to the litigation, perhaps by indicating that the evidence was  
17 destroyed prior to litigation and before the party could have any reasonable indication that  
18 litigation would be brought relative to that evidence [see, e.g., *Akiona v. United States* (9th  
19 Cir 1991) 938 F2d 158, 161, cert. denied, 503 US 962 (1992)].

20 A party should only be penalized for destroying documents if it was wrong to do so,  
21 and that requires, at a minimum, some notice that the documents are potentially relevant  
22 [*Akiona v. United States* (9th Cir 1991) 938 F2d 158, 161, cert. denied, 503 US 962 (1992)].  
23 A party should only be penalized for destroying documents if it was wrong to do so, and that  
24 requires, at a minimum, some notice that the documents are potentially relevant [*Akiona v.*  
25 *United States* (9th Cir 1991) 938 F2d 158, 161, cert. denied, 503 US 962 (1992)].

26 In the case at bar, there was an officer involved shooting resulting in the death of a  
27 young individual. The decedent was alleged to have been attempted to break into “the  
28 truck”, an alleged activity that gave rise to the chase which culminated in the killing of Mr.

1 Barrera by an Oxnard Police Department. Certainly this set of circumstances would alert  
2 even the most simple of administrators that litigation is possible if not probable, and that the  
3 truck, and all the contents therein, were relevant to any such litigation.

4 In fact, both of Plaintiffs counsel, on separate occasions, sent correspondence to  
5 Defendants asking them to preserve all evidence. Counsel for Maria Lazos specifically  
6 requested access to the truck in correspondence separately addressed to each defendant.  
7 Furthermore, Maria Lazos filed a Claim Against Public Entity on October 07, 2009 and the  
8 truck was released on October 09, 2009. Therefore, Defendants cannot state that they were  
9 unaware of any potential litigation.

10 The release of the truck to Mr Garcia absent any admonition, request, or without the  
11 provision of any other type of caveat or proviso that the truck need be preserved and/or  
12 made available to Plaintiffs counsel was clearly done in bad faith and with the intent to  
13 deprive plaintiffs of access to the truck. Defendants had both actual and/or constructive  
14 knowledge that the truck need be preserved.

15 In essence, defendants put themselves in the best of circumstances. Defendants  
16 abused their status as public entities, especially as law enforcement defendants. There is  
17 inherent power in such a status, and Plaintiffs proffer to this Court that because of this fact,  
18 defendants should be under a more stringent standard than private parties. Defendants  
19 clearly knew that the truck was essential to plaintiffs' case in chief, and furthermore knew  
20 and exploited the fact that Luis Garcia, who was the owner of the truck, was afraid of any  
21 involvement with this case. Luis Garcia testified that he informed Officer Mancha that he  
22 was scared.


23 Plaintiffs strongly believe that Defendants had a **direct** and **absolute** duty to hold  
24 the truck until it was clear that no other party wanted to inspect the truck, and/or the statute  
25 of limitations expired. Defendants had specific knowledge that a claim had been filed  
26 against them, and that they truck had been specifically delineated in this claim. Even if  
27 Defendants were unable to procure possession of said truck for an extensive amount of time  
28 (although there is no known reason they could not), they **minimally** had a duty to ask and/or

1 encourage Luis Garcia to make the truck available to Plaintiffs and/or their counsel. The  
 2 opposite occurred in this case. Defendants intentionally released the truck expeditiously, and  
 3 actively encouraged Mr. Garcia to sell and/or destroy the truck.

4 It is for this reason that Plaintiffs respectfully request that the Court order the  
 5 exclusion of any evidence found inside the truck, exclude any evidence of decedent  
 6 attempting to commit any crimes in the truck, and/or exclude any evidence relating in any  
 7 way to the truck.


8 DATED: June 26, 2009

LAW OFFICES OF KIM D. SCOVIS

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 10   
 11 JENNY SCOVIS  
 Attorneys for Plaintiff

12 DATED: June 26, 2009

LAW OFFICES OF GREGORY A. YATES

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 15 GREGORY A. YATES  
 16 Attorneys for Plaintiff  
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# Exhibit

# “1”

NOTE: CHP 180 IS FURNISHED TO ALL PEACE OFFICERS BY THE CALIFORNIA HIGHWAY PATROL

## VEHICLE REPORT

CHP 180 (Rev. 2-99) OPI 061

REPORTING DEPARTMENT <b>ARD P.D.</b>		LOCATION CODE <b>5604</b>	DATE / TIME OF REPORT <b>10-3-07/020</b>	NOTICE OF STORED VEHICLE DELIVERED PERSONALLY <input type="checkbox"/>	FILE NO. <b>07-25163</b>
VEHICLE TOWED / STOLEN FROM		ODOMETER READING <b>06489</b>	VIN CLEAR IN SVS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO LIC CLEAR IN SVS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	DATE / TIME DISPATCH NOTIFIED	LOG NO
MAKE <b>CHEVY</b>	MODEL <b>SILVERADO</b>	BODY TYPE <b>P/U</b>	COLOR <b>WHIT</b>	LICENSE NO. <b>8H10852</b>	ONE MONTH / YEAR <input checked="" type="checkbox"/> TWO <b>12/07</b> <b>CA</b>
VEHICLE IDENTIFICATION NO. <b>1G1D1C114H2C511830A18</b>			ENGINE NO.	VALUATION BY <input checked="" type="checkbox"/> OFFICER <input type="checkbox"/> OWNER	
REGISTERED OWNER			LEGAL OWNER		

☐ STORED ☐ IMPOUNDED ☒ RELEASED ☐ RECOVERED - VEHICLE / COMPONENT

TOWING / STORAGE CONCERN (NAME, ADDRESS, PHONE)

**OXNARD TOWING**STORAGE AUTHORITY / REASON **EVIDENCE INVOLVED IN CRIME**

VEHICLE TOWED / STORED AT

**01 STURGIS RD OXNARD, CA**

AIRBAG?

☐ YES ☒ NO

DRIVEABLE?

☒ YES ☐ NO☐ JUNK ☐ UNK

VIN SWITCHED?

☐ YES ☒ NO

CONDITION	YES	NO	ITEMS	YES	NO	ITEMS	YES	NO	ITEMS	YES	NO	TIRES / WHEELS	CONDITION
SEAT (FRONT)	<input checked="" type="checkbox"/>		SEAT (REAR)	<input checked="" type="checkbox"/>		REGISTRATION	<input checked="" type="checkbox"/>		CAMPER	<input checked="" type="checkbox"/>		LEFT FRONT	<b>WORN</b>
SEAT (REAR)		<input checked="" type="checkbox"/>	ALT / GENERATOR		<input checked="" type="checkbox"/>	VESSEL AS LOAD		<input checked="" type="checkbox"/>	RIGHT FRONT				
RADIO		<input checked="" type="checkbox"/>	BATTERY		<input checked="" type="checkbox"/>	FIREARMS		<input checked="" type="checkbox"/>	LEFT REAR				
TAPE DECK		<input checked="" type="checkbox"/>	DIFFERENTIAL		<input checked="" type="checkbox"/>	OTHER		<input checked="" type="checkbox"/>	RIGHT REAR				
TRANS. STRIP			TAPES			TRANSMISSION			SPARE			HUB CAPS	<b>NONE</b>
STRIP			OTHER RADIO			AUTOMATIC			SPECIAL WHEELS				<b>NONE</b>
STRIP per 431(b) VC			IGNITION KEY	<input checked="" type="checkbox"/>		MANUAL	<input checked="" type="checkbox"/>						<b>NONE</b>

VEHICLE TO ☒ R/O OR AGENT ☐ AGENCY HOLD ☐ 22850.3 VC

GARAGE PRINCIPAL / AGENT STORING VEHICLE (SIGNATURE)

DATE / TIME

OFFICER / AGENCY AUTHORIZING RELEASE

**MANCHA**

I.D. NO.

**4804**

DATE

**10-09-07**

CERTIFICATION: I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT I AM LEGALLY AUTHORIZED AND ENTITLED TO TAKE POSSESSION OF THE ABOVE DESCRIBED VEHICLE

OFFICER / AGENCY AUTHORIZING RELEASE

**M**

SIGNATURE OF PERSON TAKING POSSESSION

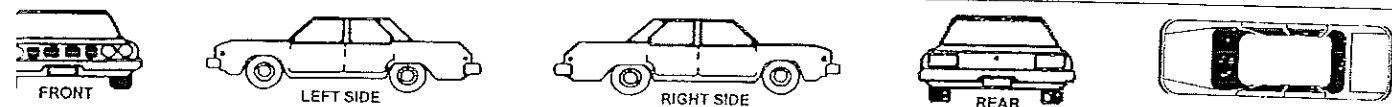
☐ STOLEN VEHICLE / COMPONENT☐ EMBEZZLED VEHICLE☐ PLATE(S) REPORT

DATE / TIME OF OCCURRENCE	DATE / TIME REPORTED	NAME OF REPORTING PARTY (R/P)	DRIVER LICENSE NO. / STATE
DRIVER OF VEHICLE	DATE / TIME	ADDRESS OF R/P	TELEPHONE OF R/P ( )
I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT		SIGNATURE OF PERSON MAKING REPORT	

## REMARKS

(LIST PROPERTY, TOOLS, VEHICLE DAMAGE, ARRESTS)

OFFICER NAME	ARRESTED / SECTION? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	REPORTED BY <b>OXPD</b>	CARGO / TYPE? <input type="checkbox"/> YES <input type="checkbox"/> NO	VALUE \$
				<input type="checkbox"/> BILL OF LADING ATTACHED

**VEHICLE WAS RELEASED TO THE R/O ON 10-9-07/1445 HOURS.**

OFFICER TAKING REPORT <b>MANCHA</b>	I.D. NO. <b>4804</b>	SUPERVISOR	REQUIRED NOTICES SENT TO REGISTERED AND LEGAL OWNERS PER 22852 VC? <input type="checkbox"/> YES <input type="checkbox"/> NO	DATE NOTIFIED
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NOTE: CHP 160 IS FURNISHED TO ALL PEACE OFFICERS BY THE CALIFORNIA HIGHWAY PATROL

## NOTICE OF STORED VEHICLE (22851 VC)

REPORTING DEPARTMENT <b>OXNARD P.D.</b>		LOCATION CODE <b>5604</b>	DATE / TIME OF REPORT <b>10/30/07</b>	NOTICE OF STORED VEHICLE DELIVERED PERSONALLY <input type="checkbox"/>	FILE NO <b>077 25763</b>								
ON TOWED / STOLEN FROM		ODOMETER READING <b>06489</b>	VIN CLEAR IN SVS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO LIC. CLEAR IN SVS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	DATE / TIME DISPATCH NOTIFIED	LOG NO								
MAKE <b>CHEVY</b>	MODEL <b>SILVERADO</b>	BODY TYPE <b>P/U</b>	COLOR <b>WHITE</b>	LICENSE NO <b>8H10852</b>	ONE <input type="checkbox"/> TWO <input checked="" type="checkbox"/> MONTH / YEAR <b>12/07</b>								
VEHICLE IDENTIFICATION NO <b>1G6CD114H2C511730918</b>		ENGINE NO.	VALUATION BY <input checked="" type="checkbox"/> OFFICER <input type="checkbox"/> OWNER <input type="checkbox"/> 0-300 <input checked="" type="checkbox"/> 301-4000 <input type="checkbox"/> 4001+ <input type="checkbox"/> \$		STATE <b>CA</b>								
REGISTERED OWNER		LEGAL OWNER											
<input type="checkbox"/> SAME AS R/O													
<input type="checkbox"/> STORED <input type="checkbox"/> IMPOUNDED <input checked="" type="checkbox"/> RELEASED <input type="checkbox"/> RECOVERED - VEHICLE / COMPONENT													
TOWING / STORAGE CONCERN (NAME, ADDRESS, PHONE) <b>OXNARD TOWING</b>			STORAGE AUTHORITY / REASON <b>22851 VC EVIDENCE INVOLVED</b>										
MOVED TO / STORED AT <b>101 STURGES RD OXNARD, CA</b>			AIRBAG? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> 1 <input type="checkbox"/> 2 DRIVEABLE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> JUNK <input type="checkbox"/> UNK VIN SWITCHED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO										
CONDITION	YES	NO	ITEMS	YES	NO	ITEMS	YES	NO	ITEMS	YES	NO	TIRES / WHEELS	CONDITION
CHECKED		<input checked="" type="checkbox"/>	SEAT (FRONT)	<input checked="" type="checkbox"/>		REGISTRATION	<input checked="" type="checkbox"/>		CAMPER		<input checked="" type="checkbox"/>	LEFT FRONT	<b>WOP</b>
FINISHED HULK per 431(c) VC		<input checked="" type="checkbox"/>	SEAT (REAR)	<input checked="" type="checkbox"/>		ALT. / GENERATOR			VESSEL AS LOAD			RIGHT FRONT	
MODALIZED			RADIO			BATTERY			FIREARMS			LEFT REAR	
TRANS STRIP			TAPE DECK			DIFFERENTIAL			OTHER			RIGHT REAR	
TS STRIP			TAPES			TRANSMISSION						SPARE	<b>NONE</b>
STAL STRIP			OTHER RADIO			AUTOMATIC						HUB CAPS	
STRIP per 431(b) VC			IGNITION KEY	<input checked="" type="checkbox"/>		MANUAL	<input checked="" type="checkbox"/>					SPECIAL WHEELS	<b>NONE</b>
SE VEHICLE TO <input checked="" type="checkbox"/> R/O OR AGENT <input type="checkbox"/> AGENCY HOLD <input type="checkbox"/> 22850 3 VC			GARAGE PRINCIPAL / AGENT STORING VEHICLE (SIGNATURE)			DATE / TIME							
OF PERSON / AGENCY AUTHORIZING RELEASE <b>M. J. [Signature]</b>		ID NO <b>4201</b>	DATE <b>10/30/07</b>	CERTIFICATION: I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT I AM LEGALLY AUTHORIZED AND ENTITLED TO TAKE POSSESSION OF THE ABOVE DESCRIBED VEHICLE									
SIGNATURE OF PERSON AUTHORIZING RELEASE <b>M. J. [Signature]</b>		SIGNATURE OF PERSON TAKING POSSESSION <b>[Signature]</b>											

SEE REVERSE FOR INFORMATION

NOTE: CHP 180 IS FURNISHED TO ALL PEACE OFFICERS BY THE CALIFORNIA HIGHWAY PATROL

REPORTING DEPARTMENT <b>ARD P D</b>		LOCATION CODE <b>5604</b>	DATE / TIME OF REPORT <b>103 07/07</b>	NOTICE OF STORED VEHICLE DELIVERED PERSONALLY <input type="checkbox"/>	FILE NO. <b>17-25163</b>
ON TOWED / STOLEN FROM		ODOMETER READING <b>06489</b>	VIN CLEAR IN SVS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	LIC CLEAR IN SVS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	DATE / TIME DISPATCH NOTIFIED
MAKE <b>CHEVY</b>	MODEL <b>2005</b>	BODY TYPE <b>P/O</b>	COLOR <b>WHIT</b>	LICENSE NO <b>8H10832</b>	MONTH / YEAR <b>12/07</b>
VEHICLE IDENTIFICATION NO <b>1GCDK114H2C511730418</b>		ENGINE NO	VALUATION BY <input checked="" type="checkbox"/> OFFICER <input type="checkbox"/> OWNER		
REGISTERED OWNER		LEGAL OWNER			
<input type="checkbox"/> SAME AS R/O					

<input type="checkbox"/> STORED	<input type="checkbox"/> IMPOUNDED	<input checked="" type="checkbox"/> RELEASED	<input type="checkbox"/> RECOVERED - VEHICLE / COMPONENT
WING / STORAGE CONCERN (NAME, ADDRESS, PHONE) <b>OXNARD TOWING</b>		STORAGE AUTHORITY / REASON <b>22850 SV (V.C.)</b>	
VEHICLE TO / STORED AT <b>101 STURGES RD OXNARD, CA</b>		AIRBAG? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> 1 <input type="checkbox"/> 2	
DRIVEABLE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> JUNK <input type="checkbox"/> UNK		VIN SWITCHED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
CONDITION	YES	NO	ITEMS
CHECKED		<input checked="" type="checkbox"/>	SEAT (FRONT)
THED HULK per 431(c) VC		<input checked="" type="checkbox"/>	SEAT (REAR)
ALIZED			RADIO
TRANS. STRIP			TAPE DECK
TS STRIP			TAPES
ETAL STRIP			OTHER RADIO
STRIP per 431(b) VC			IGNITION KEY
SE VEHICLE TO	<input checked="" type="checkbox"/> R/O OR AGENT	<input type="checkbox"/> AGENCY HOLD	<input type="checkbox"/> 22850 3 VC
OF PERSON / AGENCY AUTHORIZING RELEASE <b>MARK HA</b>	ID NO <b>424</b>	DATE <b>10 07 07</b>	GARAGE PRINCIPAL / AGENT STORING VEHICLE (SIGNATURE)
CERTIFICATION I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT I AM LEGALLY AUTHORIZED AND ENTITLED TO TAKE POSSESSION OF THE ABOVE DESCRIBED VEHICLE			DATE / TIME
SIGNATURE OF PERSON TAKING POSSESSION <b>X</b>			

SEE REVERSE FOR INFORMATION

# Exhibit

## “2”

Depo of Luis Garcia transcript

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARIA LAZOS, ET AL.,

PLAINTIFFS,

-VS-

CITY OF OXNARD, ET AL.,

DEFENDANTS.

AND CONSOLIDATED ACTION.

(PAGES 1-85)

CASE NO. CV 08-02987  
RGK (SHX)

CONSOLIDATED WITH  
CASE NO. CV 08-05153  
RGK (SH)

DEPOSITION OF LUIS GARCIA

TUESDAY, APRIL 28, 2009, 10:14 A.M.

OUR FILE NO: 090428GAS(1)

REPORTED BY: GINA A. STACY, C.S.R. 7927

1

DEPOSITION OF LUIS GARCIA, TAKEN AT 10:14 A.M.,  
TUESDAY, APRIL 28, 2009, AT 300 EAST ESPLANADE DRIVE,

Depo of Luis Garcia transcript

7 truck?

8 A No.

9 Q So you don't -- do you know whether fingerprints  
10 were taken in your truck?

11 A I don't know. Because the police -- what they  
12 did is they took my saliva to check the DNA to see if it  
13 was on there, if it was mine.

14 Q On where?

15 A Well, the police department took a test to see  
16 if -- see if my fingerprints.

17 Q On the knife?

18 A No. Not on the knife.

19 Simply just to -- they did a test on me that they  
20 wanted to be sure that it wasn't -- because they asked me  
21 if those things were mine.

22 Q Meaning the chisel and the knife?

23 A Uh-huh.

24 Q So they took saliva from your mouth for DNA?

25 A Yes.

66

†

1 Q Mr. Garcia, did anybody at any time between the  
2 morning of the shooting and to the day that you picked up  
3 the truck from Mr. Vargas -- did anybody from the city,  
4 the police, anybody from the government tell you hold on  
5 to the truck and don't get rid of it.

6 A No.

7 Q Did anybody tell you from the police department,  
8 the government, or their attorneys, Mr. DeGenna or other  
9 people -- did anybody tell you that the Tommy Barrera's  
10 people wanted the truck?

Depo of Luis Garcia transcript

11 A No.

12 I was the one that -- I told them that they were  
13 calling me, they wanted to rent me a car. And I told  
14 Mr. Mancha, and he said, well, let them take it. He said  
15 there be wouldn't be any trouble.

16 BY MR. DeGENNA:

17 Q who would be in trouble --

18 MR. DeGENNA: Misstates his testimony.

19 MS. JENNY SCOVIS: I didn't understand his  
20 testimony.

21 THE WITNESS: He told me that, if I wanted to  
22 leave the truck with them, if they wanted to take it,  
23 that it was my belonging and that they had already  
24 finished with their investigation.

25 BY MS. JENNY SCOVIS:

67

7

1 Q who told you that, sir?

2 A Luis Mancha. The truck -- I could -- I could  
3 destroy it or do whatever I wanted with it or use it to  
4 work. So I didn't want it anymore.

5 Q Did somebody -- did Maria Lazos tell you she  
6 wanted to rent you a truck so she could take the truck  
7 that was involved that night?

8 A I don't know who it was, but they called me.

9 Q Somebody called you?

10 A Yes. And they told me that they were the  
11 attorneys.

12 Q And they said that they wanted the truck and we  
13 will rent you another truck meanwhile?

14 A Yes. Something like that.

Depo of Luis Garcia transcript

15 Q Okay. Did anybody -- did whoever called you --  
16 was it somebody from Tommy Barrera's side, young Tommy  
17 Barrera?

18 A Yes. They were attorneys. That is what they  
19 told me.

20 Q The attorneys?

21 A Yes.

22 Q Okay. Now, did they also offer to buy the truck  
23 from you?

24 A No.

25 Q Nobody offered to buy it?

68

¶

1 A No.

2 Q Now, when you were offered to be given a rental  
3 car, did you say yes, or no?

4 A I told them that I had already sold the truck  
5 because I had it down in Los Angeles.

6 Q That you sold the truck?

7 A Yes. I told them that. They can check their  
8 notes.

9 Q Now, did you sell the truck when you told them  
10 you sold the truck?

11 A It was -- the deal was done. It was a business  
12 deal that we had done, but it was never finished.

13 Q So how come it wasn't finished?

14 A Because my cousin thought not fixing it -- he  
15 wanted to paint it and all. But -- rebuild it all, but  
16 then it was going to be too much money. So he said he  
17 didn't want it after all.

18 Q Did your friend not want it because it was

19 Depo of Luis Garcia transcript  
involved in the shooting?

20 MR. DeGENNA: Calls for speculation.

21 THE WITNESS: I don't know. That could be  
22 possible.

23 BY MS. JENNY SCOVIS:

24 Q Did you, Mr. Garcia, specifically ask Officer  
25 Mancha what to do with your truck? Is that correct?

69

♀

1 A I asked him.

2 Q And when did you ask Officer Mancha what to do  
3 with the truck?

4 MR. DeGENNA: Objection. Misstates his testimony  
5 as to -- misstating his testimony. He didn't ask him  
6 what to do with the truck.

7 BY MS. JENNY SCOVIS:

8 Q Did you talk to Officer Mancha about your truck?

9 A Yes.

10 Q And did you talk to Officer Mancha about your  
11 truck before you picked it up from Herman Vargas' lot?

12 A Yes.

13 Q And when you called Officer Mancha to talk to him  
14 about your truck before it got picked up from Mr. Vargas,  
15 what did you ask Officer Mancha as well as you can  
16 remember?

17 A That if I could sell it or destroy it. And he  
18 told me yes.

19 Q That you could sell it or destroy it?

20 A Yes.

21 Well, first I took it to Los Angeles. I was  
22 going to sell it. But they didn't want it. So I had to



Depo of Luis Garcia transcript

23 destroy it.

24 Q who didn't want it sold?

25 A My cousin.

70

1 Q Did the police care whether you sold it or

2 destroyed it?

3 MR. DeGENNA: Objection. Calls for speculation.

4 BY MS. JENNY SCOVIS:

5 Q That you know of.

6 Go ahead and answer.

7 A No. No because they told me that it was my

8 vehicle.

9 Q And that is what Officer Mancha said, in fact --

10 it's your vehicle, do what you want?

11 A Yes.

12 Q Okay. Thank you.

13 Now -- and that was before you picked it up from

14 Mr. Vargas?

15 A Yes. But that it -- if I wasn't going to need it

16 back or whatever, what would I do with it.

17 Q Who said that?

18 A Well, I thought. That is why I asked if I

19 could --

20 Q If you could what?

21 A Get rid of it. Sell it or trash it.

22 Q Mr. Garcia, was that the only conversation that

23 you had with anybody from the police department regarding

24 your truck --

25 A Yes.

71

Depo of Luis Garcia transcript

8 was -- I went with them. It was about the truck to -- I  
9 wanted to know when they would give it to me or what they  
10 were going to do. And I asked them.

11 And they told me you could use it to work. If  
12 there is any trouble, you could just call or come in if  
13 anything is bothering you or whatever. But I didn't want  
14 it anymore.

15 Q So you -- did you express to Officer Mancha some  
16 worry that there may be trouble from the -- Tomas Barrera  
17 and the Cholos?

18 A I told him.

19 Q And you told him that -- was that after Tomas  
20 Barrera came to see you and tell you that he has the --

21 A Yes.

22 Q Okay. And besides Tomas Barrera -- I can't  
23 pronounce anybody's name today.

24 MS. KIM SCOVIS: Barrera.

25 BY MS. JENNY SCOVIS:

74

7

1 Q Barrera.

2 Did other Cholos come to see you about the truck?

3 A No.

4 Q You were just -- you had some worry in the back  
5 of your mind that it might be trouble?

6 A Yes. That is why I never left it on the street.

7 Q Okay. I understand.

8 was there talk that you're aware of after the  
9 shooting that somebody called the police to tell them  
10 that somebody was breaking into the truck?

11 A No.

Depo of Luis Garcia transcript

12 Q Do you know whether there was a call -- do you  
13 think there was a call to the police to tell them that  
14 somebody was messing with the truck?

15 A No.

16 Q And you never called the police to say anything  
17 about the truck; is that correct?

18 A No.

19 Q No.

20 Now, when you told Officer Mancha and his  
21 companion that you had the worries that we just talked  
22 about, what did they tell you to do?

23 A That there wasn't any problem. If anybody  
24 bothered me, to just call the police department.

25 Q Did Officer Mancha or anybody else in the police

75

♀

1 department ever tell you that the lawyers representing  
2 Tommy's mother Maria Lazos or Tomas Barrera wanted the  
3 truck to look at?

4 MR. DeGENNA: Objection. Asked and answered.

5 THE WITNESS: No. No. I was the one that told  
6 them that.

7 BY MS. JENNY SCOVIS:

8 Q Okay. So when you told them that, what did they  
9 tell you to do?

10 A That it was my vehicle. I could do whatever I  
11 wanted with it. That they no longer needed it. They had  
12 already done what they had to do. So if I wanted to lend  
13 it to anybody or sell it, it wouldn't be any problem.

14 Q Okay. Did they ever advise you to make the truck  
15 available to Tommy's people?

Depo of Luis Garcia transcript

16 A No. No. They never told me.

17 Q And the reverse. Did they ever tell you to not  
18 make the truck available to Tommy's people?

19 A No. No.

20 MS. JENNY SCOVIS: Just one moment, and I may be  
21 done.

22 Q Did your cousin ever have a collision with that  
23 truck?

24 A No.

25 Q There was no car accident with the truck?

76

†

1 A No.

2 Q Was that something you told Maria Lazos?

3 A The about accidents? No. No. I don't remember.

4 About accidents? No. Because only thing that they  
5 called me, and I told them that I had scrapped it.

6 Q Scrapped it meaning you smashed it; right?

7 A (Indicating.)

8 Q Okay. That's very descriptive.

9 Did Maria Lazos -- when she called you, did she  
10 ask you to talk to her lawyer, me?

11 A I believe so. I don't remember. I didn't speak  
12 much with -- well --

13 Q You just wanted out of all this mess; right?

14 A Yes.

15 Q By the way, do you still live in the same area  
16 that you lived at the time of the shooting?

17 A If I live at the same what?

18 Q Area of Oxnard.

19 A Yes. Almost on the corner. On the other side.

1 **PROOF OF SERVICE**

2 I am employed in the county of Ventura, State of California. I am over the age of  
3 eighteen and not a party to the within action, and my business address is: Law Offices of Kim  
4 D. Scovis, 223 E. Thousand Oaks Blvd., Suite 412, Thousand Oaks, CA 91360.

5 On June 26, 2009, I served the following document(s):

6 **PLAINTIFFS MOTION IN LIMINE NO. 12 TO EXCLUDE ANY EVIDENCE**  
7 **FOUND IN THE TRUCK BELONGING TO LUIS GARCIA**

8 on the interested parties in this action by placing a true and correct copy thereof enclosed in  
9 a sealed envelope addressed as follows:

10 Law Office of Alan E. Wistosky  
11 Attention: Mr. Dirk DeGenna  
12 300 Esplanade Drive, Suite 1500  
Oxnard, CA 93036

Law Office of Gregory A. Yates, P.C.  
Attn: Gregory Yates  
16830 Ventura Blvd., #250  
Encino, CA 91436

13 Daniel C. Morgan & Assoc.  
14 1591 Spinnaker Doctor., #205  
Ventura, CA 93001

15 X

16 I am readily familiar with the business' practice for collection and processing  
17 of correspondence and mailing with the United States Postal Service; such  
18 correspondence would be deposited with the United States Postal Service the  
19 same day of deposit in the ordinary course of business. I know that the  
20 envelope was sealed and, with postage thereon fully prepaid, placed for  
21 collection and mailing on this date, following ordinary business practices, in  
22 the United States mail at Thousand Oaks, California.

23 Fed Ex overnight service.

24 \_\_\_\_\_ By Personal Service, I caused such envelope to be delivered by hand to the  
25 above address(es).

26 \_\_\_\_\_ By facsimile, I caused such document to be transmitted via facsimile  
27 machine, to the above address(es)

28 \_\_\_\_\_ (State) I declare under penalty of perjury under the laws of the State of  
California that the foregoing is true and correct.

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X

(Federal) I declare that I am employed in the office of a member of the bar  
of this court at whose direction the service was made.

Executed on June 26, 2009, at Thousand Oaks, California

  
Roschelle Ayonayon